

The August 13, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:01 P.M. with the following members present:

Matthew Zuker, Chairman  
James S. DeCelle, Vice Chairman  
Craig W. Hiltz, Clerk  
Mary Jane Coffey, Member  
Susanne Murphy, Member  
Timothy Foley, Associate Member (not present)

Also present:  
Stephanie Mercandetti, Community & Economic Development Director

**7:00 p.m. – James L. Diamond Jr. – Case #12-14**

Mr. Zuker read the public hearing notice for **JAMES L. DIAMOND JR., Case #12-14**, with respect to property located at 759 Cedar Street, Walpole, MA and shown on the Assessors Map as Lot No. 39-19, Residence A Zone.

The application is for:

A Special Permit under Section 9 of the Zoning Bylaws to allow for new construction onto an existing non-conforming structure that is within setback and elevation guidelines set forth by town bylaws regarding non-conforming structures in Residence A Zoning District, as specified in Section 9.

The applicant, James L. Diamond Jr., was present and stated that he had changed a few things around from his previous case and resubmitted plans.

Mr. Zuker asked Mr. Diamond to walk the Board through the changes.

Mr. Diamond stated that he is no longer requesting a variance that he is currently back to a 15.2 average elevation.

Ms. Murphy asked the applicant what he meant by average.

Mr. Diamond said that they base it off the peak of the roof.

Mr. Zuker stated that the applicant had an existing non-conforming structure and that the second floor is 19.2 feet.

Mr. Diamond mentioned that anything less than 20 feet is the linear distance and that you can have that in a Residence A Zone.

Mr. DeCelle questioned it being allowed in a Residence A Zone.

Mr. Zuker read comment letters into the record from the Conservation Commission, Board of Sewer & Water, Planning Board, Police Department, Board of Health, Fire Department and

Town Engineer. He noted that Engineering stated that 1.) The plan should more clearly indicate which of the red hatched/colored building footprints are being proposed, for clarity; and 2.) It should be verified that the total impervious coverage for the lot is the 12% as stated, since breakdowns of building vs. total lot coverage is not listed. Compliance with Section 12 of the Zoning Bylaw - Water Resource Protection Overlay District should be verified.

Mr. Hiltz stated that according to Section 6-C.2 in the Bylaw, it reads: In addition to the maximum height limitation hereof, no portion of any building located within twenty-five (25) feet of any point on the side line of an adjacent lot shall have a height above the grade of said point greater than its horizontal distance there from if in a Rural or Residence A district, or greater than its horizontal distance there from plus five (5) feet if in a Residence B District, or greater than its horizontal distance there from plus ten (10) feet if in a General Residence District; provided, however, that this limitation shall not apply if the building in question is more than two hundred (200) feet from the nearest Exterior line. Mr. Hiltz then went on to say that the applicant could not have a height of 19.5.

Mr. Diamond said that in a Residence A Zone it is plus five. A Residence B Zone is plus ten.

Mr. Hiltz stated that he understands it is confusing but he believes it to be inferred the way he read it.

Mr. Diamond mentioned that when he went over this with the Building Inspector, Jack Mee, he said it is plus five.

Mr. Hiltz asked the Board if they agreed with how he read it.

The Board agreed with how Mr. Hiltz interpreted the Bylaw.

Mr. Zuker stated that he felt the sideyard issue was fine. His issue was the height within the setback area. That is what he is having a problem with. Mr. Zuker felt that Mr. Diamond should have a plan or letter with an engineer's stamp on it. The Board needs to know what the exact height of the house will be.

Mr. DeCelle noted that the plans do not show any topography and that the Board cannot just make an assumption. The plans do not show the average grade.

Mr. Zuker asked if any members of the public wished to comment on the proposal. No members of the public wished to speak.

Mr. DeCelle asked Mr. Diamond if anything was going upstairs.

Mr. Diamond explained that the upstairs was going to be a walk up attic.

Mr. DeCelle asked why they even needed the second floor.

Mr. Diamond explained that they need storage space and that there is no place to add on to the property.

Mr. Zuker stated that the applicant was only before the Board for a Special Permit. He believes that the applicant could tweak this addition a little and make it completely conforming. Mr. Zuker stated that it would be his preference to continue this and let an engineer put their stamp on it. He thanked the applicant for doing what he could with the Special Permit and he felt he did a great job of revising the plans from the last time.

Ms. Murphy suggested giving the applicant a copy of the Town Engineer's letter.

Mr. Diamond asked if there was anything else he should do.

Mr. Zuker suggested pitching the roof and just changing it slightly. He felt it was a solvable issue. The applicant just needs to get an engineer to stamp a plan.

Mr. DeCelle stated that the Bylaw is written horribly. He stated that an engineer should be able to give the applicant the average grade on the property quickly. The plan needs to have topography finished grade.

Mr. Diamond mentioned that he did not know who should do that.

Mr. DeCelle responded that a surveyor could do it.

Mr. Diamond asked if it should be to the new footprint.

Mr. DeCelle said that it is based on the final grade. It's the average finished grade, the midpoint from the attic to the peak of the roof. I would like to see it go 20.2 feet.

Mr. Diamond mentioned that right now it is currently at a foot. On the other side they would like to raise up the grade.

Mr. DeCelle said if they can show that on the plan it would be helpful.

Mr. Diamond asked if he should speak with the Building Inspector about this. He wanted to know how an engineer would help him.

Mr. Zuker mentioned that an engineer needs to add an average finished grade. The engineer would know how to put it on paper. Just tell him/her that the Board is looking for certification.

Ms. Murphy suggested the applicant write down the page number of the specific section of the Bylaw.

Mr. Diamond stated that he has it.

Mr. Zuker mentioned that the applicant should get a copy of the Town Engineer's letter and provide the information being requested. He noted that the Board needs to see calculations on the plan. He felt that the applicant could get those added to his plan.

Mr. Diamond asked to get a list of what he needs to do.

Mr. Zuker stated that the Board is looking at the height explained in Section 6-C.2 of the Bylaw.

Mr. DeCelle mentioned that the plan needs to show the finished grade and show the topography to show the height.

Mr. Diamond asked if he could provide a letter.

Both Mr. DeCelle and Ms. Murphy said they would like to see it on the plan.

Mr. Zuker stated that the applicant is a lot closer than he was the last time. He commended the applicant for that.

Mr. Diamond explained that he is confused on the height.

Mr. Zuker explained that the applicant was real close and that an engineer should be able to provide the information on the plan.

Mr. Diamond explained that getting the second set of plans was a nightmare. After he spoke with the Building Inspector, he thought he would be ok.

Mr. Zuker stated that we are nearly there with the information required and to provide it at the next hearing on September 10<sup>th</sup>.

Mr. Diamond asked what if he could not get in touch with an engineer.

Mr. Zuker said the applicant should be able to have an engineer provide the details within this timeframe. Go to the ZBA office to get a copy of the Town Engineer's letter so that you can provide it to your engineer.

A motion was made by Mr. DeCelle, seconded by Ms. Murphy, to continue the hearing to September 10, 2014 at 7:00pm.

The vote was **5-0-0 in favor.** (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

Mr. Zuker asked if it would be possible to talk with the Building Inspector about this section of the Bylaw. He is hoping that the Building Inspector will be able to clear up some confusion. He would like to have the Building Inspector come to a future meeting.

**7:00 p.m. – Walsh Brothers Building Company – Case #11-14**

Mr. Zuker read the public hearing notice for **WALSH BROTHERS BUILDING COMPANY- Case #11-14**, with respect to property involving undeveloped land off Eldor Drive (Lot 10), Walpole, MA and shown on the Assessors Map as Lot No. 56-119 86R Winter Street, Residence A Zone.

The application is for:

A Variance from Section 6-B.1 of the Zoning Bylaws which requires frontage of 150 feet along the street line with 87.33 feet being provided.

A Variance from Section 6-B.1 of the Zoning Bylaws which requires a circle, the diameter of which is not less than 80% (120 ft.) of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setbacks are derived.

A Variance from Section 6-C.3.A of the Zoning Bylaws which requires a variance from lot frontage along the street line and also between said side lot lines along a line which marks the required building setback. The longer of said distances shall be considered frontage however, the shorter of such measurements shall be not less than 80% percent of the required frontage. The proposed frontage along the street line is 87.33 feet and the shorter at the setback line is 46 feet.

Mr. Zuker explained that he wanted to clear up any confusion regarding the advertisement in the Walpole Times. He explained that the advertisement was revised and resubmitted to the Walpole Times at the applicant's expense. He noted that some residents were concerned that they were not notified properly. Mr. Zuker explained that all of the abutters, any resident within a 300 foot radius of the property, were notified. He also mentioned that there can be multiple Lot 10's within the same area.

Mr. Richard Gallogly, the applicant's attorney, was present for the hearing and mentioned that this lot had these previous variances approved in 2005 Times were tough and they were not able to build at that time. Attorney Phil Macchi wrote a letter in 2006 (Provided the Board with proof of perfection of the Variance granted March 2, 2005 and amended March 15, 2006) that the Zoning Board of Appeals never responded to.

Mr. Hiltz asked if it's the applicants position that you have the variances from 2005. Why would you then need to come before the Zoning Board of Appeals.

Mr. Gallogly stated that the Building Inspector disagrees.

Mr. Hiltz said that if your position is that you have variances from 2005 then how can we process additional variances if you already have them?

Mr. Gallogly stated that he is not appealing the Building Inspector's decision. He just wanted the Board to be aware of that.

Mr. Hiltz explained that if the applicant is applying for a variance then we can process a variance today. But if the applicant has taken the position that the variances are still in effect from 2005 and disagree with the Building Inspector's ruling then you are seeking an appeal.

Mr. Zuker stated that the application before the Board is for these three variances.

Mr. Gallogly said that the Board can ignore the 2005 decision or not ignore it. He then went on to explain the variance requests.

Mr. DeCelle asked if the applicant tried to put the frontage in there. Did the applicant design it so they could do that?

Mr. Gallogly stated that they have not designed anything yet. We don't know if we can.

Mr. Zuker asked if the Winter Estates Subdivision is completely separate from this.

Mr. Gallogly stated that yes this is completely separate. You cannot have a one lot subdivision. This is one buildable lot.

Mr. Zuker stated that you can in fact have a one lot subdivision and that they do allow them.

Mr. Gallogly said that a one lot subdivision is not allowed. Building a road to create frontage would be a hardship. He mentioned that the applicant does not own this land yet. They have an agreement to buy it. This is not a typical situation. The lot was created like this from day one.

Mr. Zuker asked if the applicant had any history on the lot. Why was it created like this? What is the frontage? Were Lot 10 and 11 one big piece? It has a unique shape different than all of the other lots.

Mr. Gallogly stated that the applicant had received a variance in 2005 so someone thought it was OK.

Mr. Zuker read comment letters into the record from the Conservation Commission, Board of Sewer & Water, Planning Board, Police Department, Board of Health, Fire Department and Town Engineer. He noted the following items from the Town Engineer's comment letter: 1.) Please be advised that the project applicant for this lot should discuss an address for this lot. It will be Eldor Drive, but it will have to be either 16A or 16 Rear, since there are no other available house numbers. Specific written communication should be obtained from E911-Fire department regarding what address is preferable for the 911 system; and 2.) If there are any underground recharge system units proposed for this lot, it is highly recommended that specific onsite soil testing be performed to determine perc rate, seasonal high groundwater depth, and soil suitability for such units. Mr. Zuker also referenced the following comment from the Conservation Commission, stating that Lot 10 Eldor Drive has wetlands on and abutting the lot. A previous Order of Conditions was issued in October 2005, however the Order of Conditions has since expired. The construction of a single family house, driveway and associated grading and utilities will require the filing of a Notice of Intent with the Conservation Commission and

the wetlands boundary will need to be re-flagged and reviewed. The first 25-feet of the 100-foot buffer zone is the “no alteration area” under the Town of Walpole Wetland Protection Bylaw where no alteration or building is allowed. There is limited upland for the construction of a single family house. Mr. Zuker also mentioned that the Board had received two letters from resident Joanne Piscetello and a phone call from Mr. McGee. He then opened up the meeting for public comments.

Robert McGee of 4 Jefferson Drive stated that all of the people sitting in the general area are abutters from off Eldor Drive Lot 10. There are three specific topics that he would like to discuss tonight: setbacks, wetlands and sewer easement from the Winter Street Estates. All of the neighbors and abutters from the area do not want a house there. Half of the site in question is wetlands. Fifteen to twenty years ago there were major problems on Eldor Drive. All of the septic tanks were flooding so we had to put in sewer. Winter Street Estates is already going in. This gentleman is going to buy the land and then flip the house. He is just a builder and will flip it. All of the neighbors do not want that to happen. We are concerned with the Winter Street Estates; we want to make sure there is no sewer easement from Lot 10 going out of Eldor. The frontage will be too low, half of the land is already wetlands and that is not including the 100 foot flood zone. That will bring in more lowlands. The Board needs to consider the wetlands, the possibility for flooding etc.

Mr. Zuker mentioned that the Conservation Commission stated that the applicant will need to file a Notice of Intent with the Conservation Commission and the wetlands boundary will need to be re-flagged and reviewed.

Mr. McGee said that the Winter Street Estates are going to take out the flood line. Now they will need to add sewer. Please consider the abutters that will get flooded out.

Mr. Zuker wanted to know what the issue was with sewer.

Mr. McGee stated that it doesn't flow up hill. It builds up and then the pumps don't work. I'm a designer and a mechanical engineer for the Town of Medway. I work on big buildings in New England. I know how these people work; they just keep pushing and pushing. Eventually the residents don't show up any more. Please consider the neighbors on Eldor Drive. It is going to get flooded out.

Nancy Doyle of 29 Eldor Drive mentioned that four years ago the pump station failed. These pump stations are supposed to be adequate. It failed. Well now you can figure out what was running down the street!

Linda Tucker of 12 Eldor Drive wanted to reiterate what Mr. McGee had stated about 2005 and no one showing up to these meetings. She wanted it to be known that the residents are here and that Mr. McGee is correct that these meetings just get postponed and postponed.

Mr. Zuker stated that we should be discussing the here and now and not what happened in 2005.

Mrs. Tucker mentioned that the neighborhood now has a lot of young children and a group home. There is a lot more traffic now, more buses and cars. Everything has changed. I don't understand why the variance today is different than 2005.

Barbara Coates of 82 Winter Street mentioned that the land has wetlands on it. I have watched building trucks go in there. That land has buried old tanks on it that were never approved. They do not have any more frontage on Winter Street. I think it is about time that something was corrected.

Joanne Piscitello of 11 Eldor Drive wanted to know how you take a plan from Eldor Drive and a piece from Winter Street and create a new lot.

Mr. Zuker mentioned that the misunderstanding comes when engineers number those lots with the same number. It definitely creates some confusion. The town has assessors maps and then the property is assigned a map and parcel number. This piece was one big piece. It had frontage on both Eldor Drive and Winter Street. Whether or not it meets its zoning, the builder has the right to subdivide that lot. Lot number 10 is separate with frontage off Eldor Drive. I do not know the whole history. They do have the right to at least subdivide though.

Ms. Piscitello wanted to know how the applicant could ask for a variance on something they have not purchased yet. Where is the hardship? If the Board approves the variance for this particular lot then someone could come in and build a commercial building.

Mr. Zuker stated that as an owner of the property they would have the right to build. It happens all the time.

Ms. Piscitello wanted to know if the address would be Lot 10 on Eldor Drive.

Mr. Zuker stated that when the applicant files an application, the Board uses the map and parcel number and other information on the application that we are given. I understand that there was some confusion. The Board tried to clarify that on our end as well. There are three variances that the applicant is asking for tonight. The Board wants to know what issues the neighbors have. Everyone who needed to be notified was notified.

Mr. Hiltz mentioned that just because the residents were here does not mean that they were notified correctly.

Mr. Zuker said that is why the board sends a notice to abutters and that there is a legal advertisement in the Walpole Times. The Board asked the applicant if we could re-advertise to clear up the confusion. I checked with Town Counsel. We are on the same page.

Ms. Mercandetti mentioned that there was some confusion. When we re-advertised, we added the address noted in the Assessors database attached to the map and parcel number for clarification. The re-advertisement was at the applicant's expense. We then sent the new notice to the abutters using the list provided by the Assessor's Office.

Ms. Piscitello stated that it was misleading.

Mr. Zuker mentioned that the applicant was here tonight in front of the Board regarding this lot for one house. The applicant is asking for three variances. They will have to go to the Conservation Commission. The Board has heard concerns about flooding, sewer easement and drainage. Are there any other neighbors who are direct abutters who have concerns?

Bill Hamilton of 45 Eldor Drive stated that the Board gives a variance based on hardship. There is no hardship. It is a very difficult burden on the residents of Walpole. We have a subdivision that is being constructed. Conservation Commission has changed their laws. Now there is a retention basin going in. Some of that the Board can address but not all of it. If they have to go through a new plan it would be very difficult. If you change the road of the subdivision then you need to put in a new subdivision. Retention basins are the problem. There are many subdivisions that have complained about the flooding and the builders said 'no, no, no we will make sure there is no flooding' and then there was flooding. The Board of Appeals should be very reluctant about giving variances. We have a limited water supply. We have built extra storage tanks. We will have to put in a building moratorium. You have a real burden here and I hope you will listen to what we have said.

Mr. Zuker stated that it is a high threshold to meet. The applicant would have to prove hardship in lot, size, or topography. As an applicant and owner, you have the right to come in and ask.

Charlie Lapinski of 10 Eldor Drive mentioned that the property in question is three houses down. His question was if they do get this land then what is preventing them from building a road right through.

Mr. Zuker stated that the land has a lot of wetlands and he didn't believe they would get through the Conservation Commission.

Mr. Gallogly stated that they would never be able to get a road, it is all wetlands.

Mr. Lapinski mentioned that the Conservation Commission has changed things month to month, year to year.

Michael Coates of 9 Warren Street, Plainville, MA said that his mother is an abutter and that he would like to submit comments he had from the Walpole Fire Department into the record.

Mr. Zuker asked the applicant who owns Lot 11 on the plans.

Mr. Gallogly said that the Walsh Brothers control those lots.

Mr. DeCelle stated that he is worried about a merger.

Mr. Gallogly said that is why the applicant went to get the original variance.

Mr. DeCelle asked if in 2006 if the lots merged.

Mr. Gallogly believed that they were under the same ownership.

Mr. DeCelle stated that he was concerned about the timing.

Mr. Gallogly stated that the applicant is here tonight asking about a variance.

Mr. Hiltz said that he is not sure how that plays out but if the two properties were jointly owned then that would undermine that hardship.

Mr. DeCelle noted that the applicant created Lot 10 by creating the subdivision. When the subdivision was done was it all one? Then, when the applicant re-created the lot did that make Lot 10? He then went on to say that if he bought this lot and then bought the other lot afterwards then they could merge.

Mr. Zuker said that they were merged and then separated this piece off.

Mr. DeCelle said that the hardship was not created in 2005 it was created in 2007.

Mr. Hiltz stated that Lot 10 was created by the subdivision. Therefore wouldn't the hardship be created by the applicant? Even the buyer would see that the ANR created it.

Mr. Gallogly mentioned that the lot did not have enough frontage. The frontage problem always existed.

Mr. Hiltz mentioned that it only became locked when the applicant accessed the subdivision.

Ms. Doyle of 29 Eldor Drive questioned if the applicant had frontage until Mrs. Delapa sold her house five years ago.

Mr. Hamilton stated that he believes that is correct. That is a big question. The Delapas sold the applicant that parcel and they only sold 88 feet. We do not want the Board to think that this was granted before so therefore it should be granted again.

Mr. Zuker said no the Board is starting anew. The Board has criteria that need to be met. He then stated that his concern is that Lot 10 has a unique shape to it. Not knowing the history when you have a shape like that it looks like someone created that lot. You cannot create your own hardship. I am not clear about the whole history of this piece. I don't know what the Board would need to clarify that.

Ms. Coffey stated that she felt a formal presentation should have been made and that would have cleared up some of these problems, questions and concerns.

Mr. Zuker asked the applicant if he understood what the Board was saying. You own a big piece of land and create 10 lots but leave one lot off of the plans. Then you come back with this lot seeking variances because you have created your own hardship. If this was something you

created two years ago and then you came back, that would be one thing. I do not think the Board would say you have a hardship. You created the hardship. I'm just trying to talk through what may be helpful for us to see. The neighbors brought up drainage and some other concerns. This proposal before us is for a house on one lot. I'm struggling with how this need came about.

Mr. Hiltz noted that the Board does not have any numbers that show a financial hardship. Mr. Hiltz also mentioned that he has the same concerns as Mr. Zuker and the creation of this 80 foot frontage. The hardship was self-created at a different time. How did this 80 foot frontage come to be?

Mr. DeCelle stated that his big issue is that he does not want the Board to set a precedent for future subdivisions. If the applicant can get proof that this Lot 10 was not created by the subdivision then that would make him feel a lot better.

Ms. Coates mentioned that the lot in question never went out to Eldor Drive.

Mr. DeCelle stated that the question the Board has is a legal issue. What happened with this lot from 2005-2007?

Mr. Gallogly asked if the Board wants to know if in 2007 that plan created Lot 10.

Mr. DeCelle stated that the variance lapsed and in 2007, he wants to know if the subdivision created lot 10.

Mr. Hiltz mentioned that there is a difference between demonstrating a hardship and demonstrating that it was not a self-created hardship. I don't see the evidence here. If the Board could see some additional information, it could help the Board make a decision.

Mr. Gallogly asked if the Board would like to continue the hearing.

Mr. Hiltz asked if the applicant would be willing to grant the Board an extension.

Mr. Gallogly mentioned that it would not be a problem to grant an extension and could be provided at the next meeting if needed.

A resident asked if they would be notified again.

Mr. Zuker stated they abutters would not receive another notice via mail. Notification is given at the hearing. The meeting will also be posted on the Town Website. Mr. Zuker said that maybe the applicant could meet with some of the neighbors and also provide the timeline and history of the parcels in question to the Board at the next meeting would be helpful.

A motion was made by Mr. DeCelle, seconded by Ms. Coffey, to continue the hearing to September 10, 2014 at 7:00p.m.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

A resident asked if the Board could change the meeting because they will be out of state that night.

Mr. Zuker explained that they have already set the date and time and have to abide by that, September 10, 2014 at 7:00 p.m. in the Main Meeting Room. He mentioned that the resident could submit a letter if they would like. Mr. Zuker thanked the residents for coming out to the meeting tonight.

The Board discussed a local option statute, G.L. c. 39, §23D, otherwise known as the Mullin Rule and decided they would like to see it as a tool available to the Board should the need arise.

A motion was made by Mr. Hiltz, seconded by Mr. Zuker, to sponsor an article for the Fall Annual Town Meeting and request the Board of Selectmen include the article on the warrant.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

There being no further business, a motion was made by Mr. Hiltz, seconded by Mr. Zuker, to adjourn the meeting at 9:14 p.m.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

Craig W. Hiltz  
Clerk

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Minutes were approved on October 29, 2014.

